

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION**

| | | |
|--------------------------------------|---|----------------------|
| CURTIS STEWART, Register No. 182472, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | No. 05-4204-CV-C-SOW |
| |) | |
| DAVE DORMIRE, et al., |) | |
| |) | |
| Defendants. |) | |

REPORT, RECOMMENDATION AND ORDER

Plaintiff Curtis Stewart, an inmate confined in a Missouri penal institution, brought this case under the Civil Rights Act of 1871, 42 U.S.C. § 1983, and its corresponding jurisdictional statute, 28 U.S.C. § 1343.¹

On May 29, 2008, plaintiff filed a motion to consolidate the above-styled cause with Stewart v. Missouri Department of Corrections, No. 07-4080 (W.D. Mo. filed Apr. 19, 2007). A telephone conference was held on August 7, 2008.

Pursuant to the agreement of the parties, the above-styled cause will be dismissed, without prejudice, and plaintiff shall file an amended complaint in No. 07-4080, to include the claims of both cases No. 05-4204 and 07-4080. To facilitate the filing of such amended complaint, Missouri Department of Corrections defendants are to ensure that plaintiff Stewart has access to his legal materials.

In consideration of the foregoing, it is

ORDERED that plaintiff's motion to consolidate cases No. 05-4204 and 07-4080 and to amend his complaint in this case are denied. [154, 156] It is further

ORDERED that within twenty days, plaintiff Stewart file an amended complaint in case No. 07-4080, to include the claims of both cases No. 07-4080 and 05-4204. It is further

¹This case was referred to the undersigned United States Magistrate Judge for processing in accord with the Magistrate Act, 28 U.S.C. § 636, and L.R. 72.1.

ORDERED that Missouri Department of Corrections defendants ensure that plaintiff Stewart have access to his legal materials in order to file such amended complaint. It is further

RECOMMENDED that plaintiff's claims in the above-styled case be dismissed, without prejudice. It is further

ORDERED that plaintiff's motion for preliminary injunctive relief be denied, without prejudice. [155]

Under 28 U.S.C. § 636(b)(1), the parties may make specific written exceptions to this recommendation within twenty days. The District Judge will consider only exceptions to the specific proposed findings and recommendations of this report. Exceptions should not include matters outside of the report and recommendation. Other matters should be addressed in a separate pleading for consideration by the Magistrate Judge.

The statute provides for exceptions to be filed within ten days of the service of the report and recommendation. The court has extended that time to twenty days, and thus, additional time to file exceptions will not be granted unless there are exceptional circumstances. Failure to make specific written exceptions to this report and recommendation will result in a waiver of the right to appeal. See L.R. 74.1(a)(2).

Dated this 13th day of August, 2008, at Jefferson City, Missouri.

/s William A. Knox

WILLIAM A. KNOX
United States Magistrate Judge